No. 3649

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

THE ARIZONA AND NEW MEXICO RAILWAY COMPANY, A CORPORATION,

Plaintiff in Error,

vs.

D. E. FOLEY,

Defendant in Error.

Upon Writ of Error to the United States District Court of the District of Arizona.

BRIEF OF DEFENDANT IN ERROR.

I. KEARNEY, of Clifton, Arizona,

Attorney for Defendant in Error.

In the United States Circuit Court of Appeals for the Ninth Circuit.

THE ARIZONA AND NEW MEXICO RAILWAY COMPANY,
A CORPORATION,
Plaintiff in Error,

vs.

H. E. FOLEY,
Defendant in Error.

Upon Writ of Error to the United States District Court of the District of Arizona.

BRIEF OF DEFENDANT IN ERROR.

STATEMENT.

This is a much travel stained case. It was begun In justice court to recover a few dollars due for labor, and removed to the federal district court, and now it is in this court. If there ever was a proper case in which to impose a penalty for frivolous appeal, surely this is it.

Practically the whole of appellant's brief is based upon a

self-claimed plea of fairness and justice, but it entirely ignores the law, and forgets that the purpose of the Adamson Act was to increase salaries of railroad employees and was passed with that object in view.

Plaintiff in error, in its zeal, has forgotten that in adopting Schdule D, on June 16th, 1916, (*Transcript p.* 28,) that it contained this provision:

> "All rates of pay, rules and regulations previously in effect are null and void."

If this did not wipe out Schedule A, adopted April 1, 1911, (*Transcript p.* 9,)then we are free to admit that words have no meaning.

Proposed Schedule B, Transcript pp. was never adopted.

Schedule D, Transcript pp. 28-36, was the only schedule of salaries in force when the Adamson Act became law, and was the only schedule of pay that the Adamson Act could be applied to. All former pay schedules had been abrogated.

Schedule E, Transcript pp. 37-38, did not contemplate the enactment of a law fixing salaries, but had in view the possibility of making another contract,—note the words therein used. (*Transcript p.* 37.)

> "That in case, in the future, the employees ask for a new schedule based on either an eight-hour day or time and one-half for over time, or both of these provisions, that the new schedule of June 16th, 1916, will not be used as a basis on which to figure out rates of pay or working conditions."

This contemplated a possible change in salaries by contract in the indefinite future, and could not have had in view the Adamson Act fixing salaries of employees. Sec. 1 of the Adamson Act does not present the condition of the employee asking for a new wage schedule; that law fixed the compensation. The Act says, "'that beginning January, 1917, eight hours shall in all contracts for labor and services, be deemed a day's work and the measure or standard of a day's work for the purpose of reckoning the compensation for services of all employees who are now or may hereafter be employed by any common carrier by rail."

Section 3 of the Act provides that the "compensation of

railway employees subject to this act for a standard eight-hour day shall not be reduced below the present standard day's wage, and for all necessary time in excess of eight hours such employee shall be paid at a rate not less than the pro rata for such standard eight-hour work day."

Under this law the employee's pay is fixed. It does not present the question of the employee contracting for, or asking for, another schedule of pay, the law has fixed the schedule, and says that his pay shall not be reduced.

It appears from page 39 of Transcript that plaintiff in error has entirely disregarded the Adamson Act, and went back to Schedule A, which had no existence when the Adamson Act became law, and made this obsolete schedule the basis for paying its employees.

If plaintiff in error had applied the Adamson Act to Schedule D, the only schedule in force when this act became law, as it should have done in obedience to that law, then the defendant in error would have received the compensation sued for herein.

As the Honorable, Farrington, District Judge in his opinion rendered on deciding this case, Transcript pp. 47-55, has fully covered all the features of the case, further statement is unnecessary.

Respectfully submitted,

L. KEARNEY,

Attorney for Defendant in Error.